PRIVY COUNCIL REPORTS

LEE CHOW MENG v. PUBLIC PROSECUTOR

[Privy Council (Lord Wilberforce, Lord Russell of Killowen, Lord Keith of Kinkel) May 10, 1979]

Criminal Law and Procedure — Petition for leave to appeal from decision of Federal Court — Privy Council — Jurisdiction — Courts of Judicature (Amendment) Act, 1976 (Act A 328), s. 13.

In this case the appellant was convicted by the Special President in Kuala Lumpur on April 19, 1975 and the court imposed consecutive sentences on him for various offences to which he pleaded guilty. He appealed against sentence to the High Court which dismissed his appeal on October 22, 1975. On January 23, 1976 reference on a question of law by the High Court to the Federal Court was abolished but a right of appeal from the High Court to the Federal Court conferred. On April 12, 1976, the High Court granted the defendant a certificate of reference on a question of law to the Federal Court. On September 8, 1976, the Federal Court refused to consider the reference but instead gave the appellant leave to appeal out of time. By a judgment dated April 8, 1978, the Federal Court struck out the appeal on the ground that at the time of his conviction the appellant had had no right of appeal to the Federal Court ([1978] 2 M.L.J. 36). The appellant applied for special leave to appeal in *forma pauperis* from the decision of the Federal Court.

Held: the effect of section 13 of the Courts of Judicature (Amendment) Act, 1976, is to exclude the right of appeal to the Yang di-Pertuan Agong in criminal matters and therefore the Privy Council has no jurisdiction to entertain the application.

PRIVY COUNCIL APPEAL FROM MALAYSIA.

Jagjit Singh for the appellant.

P. Medd, Q.C. for the respondent.

Lord Wilberforce (delivering the judgment of the Board): Their Lordships are of opinion that this petition must be dismissed. They consider that they have no jurisdiction to entertain it or to entertain an appeal. They consider that the effect of the amendment of section 74 of the Courts of Judicature Act, 1964, which is effected by section 13 of Act No. A328 of Malaysia, and in particular subsection (4) of that section 13, makes it perfectly clear that the amendment in question, which deletes the right of appeal in criminal matters, applies to all cases except those in which an appeal or an application for appeal is pending at the date of coming into force of the section, namely January 1, 1978. It is not possible to say on any view of the matter that there was pending on January 1, 1978, either an appeal or an application for appeal, and therefore their Lordships consider that the right of appeal in this criminal matter to the Yang di-Pertuan Agong is excluded. For this jurisdictional reason their Lordships are unable to entertain the petition.

Petition dismissed.

Solicitors: *Coward Chance; Stephenson Harwood*

T. DAMODARAN v. CHOE KUAN HIM

[P.C. (Lord Diplock, Lord Morris of Borth-y-Gest, Lord Edmund-Davies and Lord Fraser of Tulleybelton) April 3 and June 11, 1979]

[Privy Council Appeal No. 24 of 1977]

Legal Profession — Solicitor — Undertaking to pay balance of purchase moneys on registration of transfer of land — Lis pendens registered against land by third party — Effect of.

Land Law — Transfer of Land — Registration — Indefeasible title — Lis pendens — Effect of registration against land — National Land Code, ss. 215, 297, 340 & 417.

English Law — Reception of — Lis pendens — Civil Law Act, 1956, s. 6.

In this case the respondent as advocate and solicitor was acting for both the purchasers and the vendor of a piece of land. He gave an undertaking to confirm that the balance of the purchase money had been deposited with his firm and that this could be paid to the vendors upon the transfer of the land being registered. The transfer was duly registered but in the meantime a third person had obtained a *lis pendens* and this had been registered against the land. The respondent indicated that he would pay the money into court but the appellant, the vendor, applied for the payment of the money to him. The learned trial judge initially in Chambers ordered the payment of the money forthwith to the appellant but subsequently after further argument he ordered the money to be paid into court as deposit. The appellant appealed to the Federal Court which by a majority held that in the peculiar circumstances of the case the respondent should be allowed to pay the money into court and not to the appellant, the vendor — see [1976] 2 M.L.J. 207. The appellant appealed.

Held: (1) the terms of the solicitors' undertaking were clear, unqualified and unequivocal and there was no reason why the appellant should not recover the balance of the purchase price;

(2) even if the entry in the register of the order of *lis pendens* was lawful, it served no useful purpose at all and the purchaser in this case, had obtained the title to the land free from encumbrances;

(3) where by reason of a pending action in which the title to registered land is in dispute it would be just to suspend the registered proprietor's right to transfer the land pending the determination of the action, the proper and effective way of doing so is by entry of a private caveat.

Cases referred to:-

(1) *Damodaran* v. *Vesudevan* [1975] 2 M.L.J. 231.

(2) *Fels* v. *Knowles* (1906) 26 N.Z.L.R. 604, 620.

(3) *Eng Mee Yong & Ors.* v. *V. Letchumanan* [1979] 2 M.L.J. 212.

(4) *Bellamy* v. *Sabine* (1857) 1 De G. & J. 566, 580.

PRIVY COUNCIL APPEAL FROM MALAYSIA.

D.K. Ratee Q.C. (*C.W. Wong* with him) for the appellant.

Lim Kean Chye (*A. Jayadeva* with him) for the respondent.

Cur. Adv. Vult.

Lord Diplock (delivering the judgment of the Board): This, on the face of it, was a very simple case, well suited to be disposed of under the summary procedure which is available in Malaysia, as it is in England, for enforcing solicitors' undertakings. The undertaking which the appellant (herein referred to as "the vendor") seeks to have enforced was given by the respondent (herein referred to as "the solicitor") in connection with the sale of five parcels of land in Kedah to clients of the solicitor (herein referred to as "the purchaser"). The essential facts about the sale can be stated briefly.